



**MISSOURI
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May 12, 2006

The Honorable Jay Nixon
Attorney General of Missouri
Supreme Court Building
Jefferson City, Missouri 65101

Dear Attorney General Nixon:

I write to express my concern regarding the outcome in the adoption subsidy case, E.C. v. Blunt, as well as provide you with our position on how we wish to proceed with the appeal. I was concerned when I read public statements attributed to you criticizing the new statute and its intent. Let me assure you the goal of the department has not changed. The adoption subsidy was enacted into statute to establish a program designed to increase the number of children that are adopted. I believe the intent of this portion of SB 539 was to accomplish this goal in a fiscally responsible manner.

Judge Wright has ruled that the changes to the adoption subsidy program were unconstitutional. He provided that the changes incorporated under Senate Bill 539 violated the contracts clause because the Department entered into contracts until the children turn 18; therefore, the Department cannot make unilateral changes to the contracts. The Department plans to comply with Judge Wright's ruling on the existing contracts and would desire that you drop that portion of the appeal.

Judge Wright also ruled that Senate Bill 539 violated equal protection. He provided in his order that federally funded Title IVE adoption subsidy program and the state funded program would have differing criteria, which he deemed discriminatory. We take issue with part of his ruling because it has important states' rights implications that go beyond just this case. The Department strongly believes in the right of the State of Missouri to define and determine the parameters of its state-only funded adoption subsidy program. If Judge Wright's ruling on this issue is allowed to stand, it could potentially adversely impact many programs across state government. It is imperative that this states' rights issue be vigorously defended on appeal.

Based on Judge Wright's ruling, the Governor has directed the Department to restructure the program consistent with the court's order and

the intent of Senate Bill 539, which is to provide assistance to those who need it most. Prospectively, the Department will review the way contracts are written and create individualized contracts based on the needs of the children, not on the income of the parents. By focusing on the needs of the children, we believe we can restructure the program in a way that will best serve the children as well as the State.

I anticipate a vigorous defense of the states' rights issue in the appeal. I stand ready to provide any assistance that you may need in doing so. Please contact me if we may be of assistance. Thank you for your prompt attention to this matter.

Sincerely,

K. Gary Sherman
Director

KGS:dl